

IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE
February 28, 2007 Session

CHAUSIE NEAL v. ASTRA ZENECA, LP

Appeal from the Circuit Court for Hamilton County
No. 04-C-1388 L. Marie Williams, Judge

No. E2006-01751-COA-R3-CV - FILED APRIL 13, 2007

The issue presented in this case, which arises from damages sustained during an automobile accident, is whether there is material evidence to support the jury's verdict. The plaintiff, Chausie Neal, sued to recover for physical injuries and medical expenses she incurred as a result of a collision between her car and that of the defendant's employee, who was driving a company car in the course and scope of her employment. The defendant, Astra Zeneca, LP, ("Astra Zeneca") filed a counter-complaint, seeking payment for the damage to its vehicle. The jury returned a verdict finding Ms. Neal 85 percent at fault and Astra Zeneca 15 percent at fault. Based on that verdict, the trial court entered judgment for Astra Zeneca in the amount of \$4,795.63. On appeal, Ms. Neal argues that there was no material evidence to support the jury's verdict. After careful review, we hold that there was ample evidence to support the jury's findings in this case. The decision of the trial court is affirmed.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed;
Case Remanded

SHARON G. LEE, J., delivered the opinion of the court, in which CHARLES D. SUSANO, JR., and D. MICHAEL SWINEY, JJ., joined.

John W. McClarty, Chattanooga, Tennessee, for the Appellant, Chausie Neal.

Douglas M. Campbell, Chattanooga, Tennessee, for the Appellee, Astra Zeneca, LP.

OPINION

I. Background

This case arises from an automobile accident that occurred on September 17, 2003, at approximately 4 p.m. at the intersection of Wilcox Boulevard and Wilcox Street in Chattanooga. The intersection is approximately 400 feet south of a tunnel on Wilcox Boulevard. Ms. Neal, a 17-

year-old high school senior, was traveling west on Wilcox Boulevard. Her vehicle collided with a car driven by Ms. Carroll as she turned left in front of Ms. Neal to enter Wilcox Street. Ms. Neal testified that she was traveling between 30 m.p.h. and 35 m.p.h. after passing through the tunnel, was following another vehicle, and did not see Ms. Carroll's vehicle until it was turning in front of her. Ms. Neal's vehicle struck the right rear door and tire of Ms. Carroll's car. Ms. Neal was transported to the hospital by ambulance; Ms. Carroll did not sustain any physical injuries from the accident.

Ms. Carroll is a pharmaceutical sales representative employed by Astra Zeneca, LP. Her job consists of visiting physicians in the Chattanooga area to promote certain cholesterol medications manufactured by Astra Zeneca. At the time of the accident, Ms. Carroll was driving a Dodge Intrepid provided to her by Astra Zeneca. According to her testimony at trial, Ms. Carroll was traveling east on Wilcox Boulevard toward the tunnel when she changed her mind about which doctor she was going to call upon that afternoon, opting to visit a group of pediatricians at Memorial Hospital. Because Memorial Hospital was in the opposite direction from her course of travel, Ms. Carroll planned to turn left onto Wilcox Street at its intersection with Wilcox Boulevard, then turn around and proceed west on Wilcox Boulevard toward the hospital. Ms. Carroll testified that she slowed down and turned on her blinker in preparation for making the left turn onto Wilcox Street, but she could not remember whether she came to a complete stop. Ms. Carroll said that she did not remember any traffic coming toward her out of the tunnel and that she also did not see Ms. Neal's vehicle before it hit her vehicle as she turned across the westbound lane of Wilcox Boulevard toward Wilcox Street.

Officer Heather Stone of the Chattanooga Police Department responded to the scene of the accident. She testified that the accident occurred in the westbound lane of Wilcox Boulevard. Officer Stone said that she took statements from both Ms. Carroll and Ms. Neal, but did not take measurements or do any investigation to determine whether Ms. Neal was speeding at the time of the collision. Officer Stone testified that the area where Ms. Carroll turned was not visible to traffic exiting the mouth of the tunnel traveling west on Wilcox Boulevard, but became visible as traffic approached the intersection. She also stated to the jury that she observed Ms. Carroll's turn signal was turned on when she arrived at the scene.

Terrilyn Nicholson, Ms. Neal's cousin, was present at the accident scene after the collision. Ms. Nicholson testified that she walked up to Ms. Neal and asked her what had happened, then Ms. Carroll came over to them and said, "Honey, please don't be angry with her. It was my fault. I don't know what I was thinking." Ms. Nicholson also said that Ms. Carroll admitted to pulling out in front of Ms. Neal's car. Ms. Neal confirmed hearing Ms. Carroll's statements to her cousin. However, at trial, Ms. Carroll denied telling anyone that the collision was her fault.

The jury apportioned 15 percent of the fault for the accident to Astra Zeneca and the remaining 85 percent to Ms. Neal. The amount of vehicle damage to Astra Zeneca's car was stipulated to by both parties. In accordance with the jury's verdict, the trial court rendered judgment for Astra Zeneca in the amount of \$4,795.63. Ms. Neal filed a motion for a new trial, which the trial court denied. Ms. Neal appeals.

II. Issue

The sole issue raised by Ms. Neal on appeal is whether there is material evidence to support the jury's verdict.

III. Analysis

Our inquiry is whether there is material evidence to support the jury's verdict. Rule 13(d) of the Tennessee Rules of Appellate Procedure provides in pertinent part that "[f]indings of fact by a jury in civil actions shall be set aside only if there is no material evidence to support the verdict." Tenn. R. App. P. 13(d). Our review of this case is guided by the following principles enunciated by the Tennessee Supreme Court:

While these issues involve a review of the evidence, such review is not to determine where the truth lies or to find the facts, that not being our province in jury cases. It is only to determine whether there was any substantial evidence to support the verdict; and it must be governed by the rule, safeguarding the constitutional right of trial by jury, which requires us to take the strongest legitimate view of all the evidence to uphold the verdict, to assume the truth of all that tends to support it, to discard all to the contrary, and to allow all reasonable inferences to sustain the verdict.

D. M. Rose & Co. v. Snyder, 206 S.W.2d 897, 901 (Tenn. 1947) (internal citations omitted). Furthermore, if there is material evidence to support the verdict, that verdict must be affirmed, even if there is other testimony or evidence that supports the appellant's position. *City of Chattanooga v. Ballew*, 354 S.W.2d 806, 809 (Tenn. Ct. App. 1961).

After a careful review of the entire record, we conclude that the jury's verdict is supported by material evidence. In making this decision, we must take the strongest legitimate view of the evidence in favor of the verdict, assuming the truth of all that tends to support it, discard all to the contrary and allow all reasonable inferences to sustain it. Ms. Carroll testified that she activated her turn signal, slowed down or stopped, and checked for oncoming traffic before making her left turn across Wilcox Boulevard. She stated that she did not see any traffic coming toward her at that time. Ms. Carroll's vehicle was struck after it had crossed into the westbound lane of Wilcox Boulevard. Ms. Neal said she did not see Ms. Carroll's vehicle until just before impact or at impact, even though the intersection where the collision took place was visible for approximately 400 feet. Furthermore, Ms. Neal testified that she was traveling between 30 m.p.h. and 35 m.p.h. then slammed on her brakes when she saw Ms. Carroll's vehicle; however, the collision was so severe that the force of the impact blew out Ms. Carroll's right rear tire and caused the car to spin around in the road. From this evidence, the jury could have reasonably inferred that Ms. Neal was speeding and/or failed to keep a proper lookout as she passed through the tunnel and traveled the estimated 400 feet to the intersection where she struck Ms. Neal's vehicle.

The jury was instructed on Tenn. Code Ann. § 55-8-129, which provides as follows:

The driver of a vehicle within an intersection intending to turn to the left shall yield the right-of-way to any vehicle approaching from the opposite direction which is within the intersection or so close thereto as to constitute an immediate hazard, but the driver, having so yielded and having given a signal when and as required by this chapter, may make such left turn, and the drivers of all other vehicles approaching the intersection from the opposite direction shall yield the right-of-way to the vehicle making the left turn.

Officer Stone testified that the accident occurred in the westbound lane of Wilcox Boulevard, the lane in which Ms. Neal was driving. Because Ms. Neal struck the rear portion of Ms. Carroll's vehicle in Ms. Neal's lane of travel, the jury could have inferred that Ms. Neal violated Tenn. Code Ann. § 55-8-129 by failing to yield the right of way after Ms. Carroll had already begun to make a left-hand turn within the intersection.

We also note that the weight and credibility to be accorded to a witness' statements are to be determined by the jury as the finder of fact. *Dunn v. Davis*, No. W2006-00251-COA-R3-CV, at *7 (Tenn. Ct. App. W.S., filed March 6, 2007). Therefore, the jury was not required to believe Ms. Neal or her witness who testified that Ms. Carroll accepted responsibility for the accident and admitted that she turned in front of Ms. Neal's vehicle. There was material evidence from which the jury could have concluded that Ms. Neal was 85% at fault because she operated her vehicle at an excessive rate of speed, failed to keep a proper lookout ahead, and/or violated Tenn. Code Ann. § 55-8-141, and that Ms. Carroll was 15% at fault for not seeing Ms. Neal before she turned.

IV. Conclusion

We hold that there was material evidence to support the jury's apportionment of fault. Therefore, the trial court did not err in its judgment or in denying Ms. Neal's motion for a new trial. We affirm and remand this case to the trial court for further proceedings consistent with this opinion. Costs of appeal are taxed against the Appellant, Chausie Neal.

SHARON G. LEE, JUDGE